

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on March 11, 1999 at
3:17 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddy McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 167, HB 281, HB 461,
3/3/1999
Executive Action: HB 557, HB 395, HB 281, HB 167

HEARING ON HB 167

Sponsor: REP. ROYAL JOHNSON, HD 10, Billings

Proponents: Nancy Butler, State Fund

Opponents: None.

Opening Statement by Sponsor:

REP. ROYAL JOHNSON, HD 10, Billings, related this is a clean-up bill for the Workers' Compensation Act as a result of SB 67 from last session. The Old Fund Liability was terminated on January 1, 1999 and the taxpayers, employers, employees and self-employed were saved about \$50M per year.

The only thing in this bill that is of real consequence is the fact the New Fund took care of the Old Fund and \$3M per year was allotted for the administrative expenses. The auditor suggested the expenses should be charged again. Line 7 on the first page of the bill explains this.

Proponents' Testimony:

Nancy Butler, State Fund, explained the Old Fund Liability Fund ended in December of 1998. Now that this tax has ended, there are a number of sections of law which need to be cleaned up and repealed to accommodate that change.

Section 7 of the bill looks like a lot of new language but it is language which was moved over from a section that is being repealed. It's the language which governs relationship of the Old Fund and the New Fund.

The only substitute change in the bill is the Old Fund claim administration fee is revised from \$3M to \$1.25M which is adequate for the State Fund to administer the claims.

Opponents' Testimony:

None.

Questions from Committee Members and Responses:

CHAIRMAN TOM KEATING asked what the source of the \$1.25M for the administration.

Nancy Butler responded that money is set aside in the Old Fund to handle the claims. It is from the Old Fund Liability Tax.

CHAIRMAN KEATING asked if it is the residue of the payroll tax.

Ms. Butler answered that is correct. Enough money was set aside to handle the claims and to pay the expenses, along with a 10% contingency. Sufficient money was set aside for the State Fund to pay the claims and for administrative expenses.

CHAIRMAN KEATING inquired if the \$1.25M would be required until the claims are gone.

Ms. Butler responded it is a maximum of \$1.25M each year until the claims are gone. It may be the legislature will want to come back and adjust it again in the future. It should go down each year.

CHAIRMAN KEATING then asked how long they anticipated the claims to last.

Ms. Butler alleged at least until the year 2005, and she was certain some of the claims would go past that date. The Old Fund included claims which occurred as late as June 30, 1990. If a young person filed one of those claims who had a permanent total disability, his or her claim would continue a number of years. The medical expenses on his or her claim would continue as well.

CHAIRMAN KEATING questioned if they used up to \$1.25, did the remaining amount remain in the account.

Ms. Butler said that is correct.

CHAIRMAN KEATING asked what the balance was in the account now for both claims and administration.

Ms. Butler responded \$149M.

SEN. ALVIN ELLIS asked what is contemplated for the residue in the account.

Ms. Butler answered for the excess money in the Old Fund, the State Fund, through SB 67 of the last session, transferred \$63.8M to the Old Fund in addition to a dividend which was declared in 1996 of \$102M of State Fund money. It is calculated fairly closely. It is just enough to handle the claims, administer the claims, and allow for a 10% contingency cushion. If there should be any money left over at the end of each year, after all the claims are taken care of, that money can go back to the State Fund, but not to exceed the \$63M.

Closing by Sponsor:

REP. JOHNSON stated the total liabilities in the Fund are about \$180M. There are about 2,000 claims left, none of which are newer than 1990, which was one reason he suggested they should reduce that amount of money to pay administrative costs.

HEARING ON HB 281

Sponsor: REP. ROYAL JOHNSON, HD 10, Billings

Proponents: None.

Opponents: None.

Opening Statement by Sponsor:

REP. ROYAL JOHNSON, HD 10, Billings, both opened and closed by stating the Committee could table this bill.

{Tape : 1; Side : A; Approx. Time Counter : 9 - 54}

HEARING ON HB 461

Sponsor: REP. BRUCE SIMON, HD 18, Billings

Proponents: Duane Steinmetz, Chairman, State of Montana Board of Plumbers
 Elmer LaZure, State of Montana Board of Plumbers
 Jo Hawkins, State of Montana Board of Plumbers
 Keith Allen, International Brotherhood of Electrical Workers #233
 Bob Nault, Master Plumber, State of Montana Board of Plumbers, Havre
 Carl Schweitzer, Plumber's Association
 Bob Rooney, Contractor, White Sulphur Springs

Opponents: Mike Foster, Montana Contractor's Association

Opening Statement by Sponsor:

REP. BRUCE SIMON, HD 18, Billings, brought HB 461 to the Committee. This bill is a result of his work in building and licensure. A very clear problem has arisen, which has been an ongoing problem for a couple of the Boards doing licensure. When somebody is found out working on a job site doing plumbing work who is not licensed, someone has to file a complaint. That complaint is sent to Helena and they notify that person. That person has a certain amount of time to respond. During that period of time an investigator is sent out, then there is a

waiting period until the Board meets. After the facts are gathered, and after the person who the complaint is issued against gets an opportunity to respond, the Board looks at the facts, and the person can contest it. If the Board finds this person to have operated without a license, the Board tells the attorney to go to court and get an injunction to stop this person from doing this work, which takes additional time. By the time we are through the whole process, the project is over and the person who is doing this work without a license has left. Therefore, nothing happens. They show up on the next job site and the process begins all over again. This bill is only for the licensure Board and their investigators to do this work. There are a lot of frustrated people who wonder why they carry a license.

Proponents' Testimony:

Duane Steinmetz, Chairman, Montana State Board of Plumbers, related the only option the Boards have against unlicensed practice is an injunction which takes about six months to process. These occupations are not stationary, they go from job site to job site. When complaints come to the Board the job may be over before the investigator arrives. There should be a quicker, less costly process. He referred to the Fiscal Note and mentioned the Building Codes Division would like to collect the fine fee and then charge the Boards for their expenses. He stated they already do investigations for people who don't take out permits and he does not feel this is appropriate. He submitted optional amendments **EXHIBIT(las55a01)**.

Elmer LaZure, Montana State Board of Plumbers, supported HB 461 **EXHIBIT(las55a02)**.

Jo Hawkins, Montana State Board of Plumbers, also supported the bill **EXHIBIT(las55a03)**.

Keith Allen, International Brotherhood of Electrical Workers, stated his family has been in the electrical business in Montana for over 90 years. His grandfather was the first state licensed Master Electrician and he was on the first state electrical board. When he sees something his grandfather helped create beginning to get chipped away by non-licensed practices, it frustrates him. In Dillon there was a hotel built and at that time there were people on the job who were licensed electricians who worked out of their classification. They had 30 complaints on this problem before it was handled. If this legislation was in law, one inspector could have gone and put a stop to it all.

Bob Nault, Master Plumber, Montana State Board of Plumbers, Plumbing & Heating Contractor, Havre, informed the Committee he is completing his tenth year on the Board of Plumbers. Their biggest problem is non-licensed people working in the field of plumbing. The law does not work now and he asked for support of this bill.

Carl Schweitzer, Plumber's Association of Montana, stood in full support of this bill. If a person is not licensed, they should not be doing this work because it affects public health and safety.

Bob Rooney, Contractor, White Sulphur Springs, does electrical, plumbing, and general construction. He said most of the County Attorneys are over-booked and do not have time for these problems. It is an absolute shame when an inspector shows up on the job he almost always finds non-licensed workers. It is a joke in rural areas. When they are gone, they are gone. These people know what the process is and what it would take to get them in trouble. He went to a lot of trouble to get his plumber's license. He feels that he is the one who is penalized for holding the license because he could be in trouble in his work, but nothing is done to the people who do not have a license.

Opponents' Testimony:

Mike Foster, Montana Contractor's Association, alleged certainly if people are violating the law should be punished in the best manner possible. This bill has raised questions as to how to go about this problem. What is happening is we are turning these inspectors into law enforcement officers. Are they going to carry a gun? If that is ludicrous, he asked if there is any law enforcement agents who do not carry a gun. Is it right to penalize someone \$100 or \$500? What if they are licensed and didn't happen to have their license that particular day? He is not sure of the necessity of this approach, however, is willing to work on it with anybody in addressing these problems.

Questions from Committee Members and Responses:

SEN. COCCHIARELLA commented the 'proof of license' is her language in the bill because there was a problem which came to them from people bidding on projects and losing bids and then the competitor putting to work people who are not licensed in place of the licensed plumbers and electricians. She asked **Mike Foster** if it seemed to him this bill goes in the direction of finding a

way to enforce and keep the playing field level for people in his industry especially.

Mr. Foster responded he does not disagree with her. Anytime there is a problem which creates an unequal playing field and people are violating the law, that is wrong. And we need to do something about that. If this is the best approach, so be it. But when his people looked at this bill, they thought it may create more problems because of the manner in which it would be administered.

SEN. COCCHIARELLA asked **REP. SIMON** if he remembered serving on the Business Committee when she brought this language in the past, and if he remembered people talking about how the plumbers ask another plumber to see their license and the comments about guns.

REP. SIMON responded we do not have out building inspectors going out with guns when they inspect a building. He thinks it is foolishness to even talk about it.

SEN. COCCHIARELLA asked if he had heard of anyone having a gun pulled on them since this legislation.

REP. SIMON answered he had no knowledge of that.

SEN. COCCHIARELLA inquired if anyone had an example of when a gun has been pulled. (No one in the room responded that they had.)

SEN. MCNUTT remarked he is a little confused to the enforcement of this bill. He said as he sees the provisions requiring the inspector to try to fine the non-licensed worker. Using the scenario if the worker on the job doesn't have his billfold, and he isn't fined. How is the administration and collection of that fine completed?

REP. SIMON responded when the citation is issued, the person could post bond on the spot if they had the money. If they didn't have the money, they would be given a reasonable amount of time to pay the bond on the citation.

SEN. MCNUTT conveyed if a person is cited with a violation of no fishing license, and he cannot post bond, he goes to the Justice of the Peace. But in statute regarding the procedure to give the officer the authority to do that, what happens if that person flat refuses to pay the fine? Where is the authority to administer that?

REP. SIMON answered he believes they could assert that under the Montana Procedures Act and go through that process. He believes they could resist paying the fine until that was adjudicated but once they've gone through the process they would pay the fine.

SEN. MCNUTT commented once they've gone through the process, there is a procedure for the Game Warden to take that citation to the Justice of the Peace. There is five days to respond. He doesn't see that in the legislation. Is it going to be enforceable if the bill passes?

REP. SIMON referred the question to **Melody Brown, Attorney, Montana Board of Electricians & Board of Plumbers**, who answered she also has that concern. She drafted the amendments **Mr. Steinmetz** presented in **EXHIBIT 1**. The amendments proposed would take out the cities and towns and any authority to them to issue these citations. It would also take out building codes which would take care of the Fiscal Note concerns they have as well as the process and tracking problems. It is her belief if that happens, the Board then has rule-making authority and they would be able to set up a process by rule which would provide an administrative process. If they refuse to pay the fine or contest the case the Board could set up a process by rule which would handle these problems.

SEN. MCNUTT commented he believes if the authority to enforce this is not statute, the first time somebody refuses to pay a fine there will be a huge problem. He said he is not against the bill, but since he doesn't see any enabling law, he believes there will be problems.

Ms. Brown said she is concerned about that as well, although she thinks the Board has authority over unlicensed practice. It is her contention they have that authority. It is currently in statute. She referred Chapter 1 which is the Uniform Licensing section 31-1-136, subsection 3 which states, "notwithstanding any other provision of law, a Board may maintain an action to enjoin a person from engaging in the practice of occupation or profession regulated by the Board until a license is procured". She stated they already have authority for injunctive action and this bill gives authority to inspect the work site and then fine. They also have rule-making authority which is not contained in this bill because it is elsewhere in statute.

{Tape : 1; Side : B; Approx. Time Counter : 0}

SEN. KEATING asked **Bob Nault** since he stated he had been on the Board of Plumbers for ten years, is the Board's authority only over licensed plumbers?

Mr. Nault answered that is correct.

CHAIRMAN KEATING then inquired if those people who do plumbing without a license make a mistake and do a bad job, do the people for whom the bad job was completed have any recourse?

Mr. Nault responded if a homeowner or someone else has a plumber work on their place who isn't licensed, they can make a complaint to the Board of Plumbers who takes that under advisement and has someone investigate it to find out the particulars. If the complaint falls under the scope of the plumbing licensure law, they ask their investigator to investigate the complaint to see if it is legitimate.

CHAIRMAN KEATING asked if this bill were passed, could an inspector issue a citation and assess a fine on a person who is not licensed to do the work and would they still have unlicensed complaints before the Board.

Mr. Nault said he thinks they would still have the complaint, but if they have the mechanism to fine the person or get them to meet before the Board and get them into Court, then they have more hold over them. Right now, if a person is hiring an unlicensed plumber and the inspector comes on the job and catches him, the person doing the hiring has demands made against his license. He either gets rid of that person or he pays a fine. The worker can be issued a citation and then a fine and because of that the complaint would still come before the Board of Plumbers so they could take a look at it to find out if they can go farther than the fine.

CHAIRMAN KEATING asked if a licensed plumber does a shoddy job and the Board receives a complaint, what happens?

Mr. Nault responded under the Plumbing Licensure Law, they can deal with that person for unprofessional conduct and if the job is not completed according to code, they can demand a complete job according to code or take action against that person's license.

Melody Brown added that this bill will give them another tool. For example, if a person gets cited three or four times, all those citations will come before the Board. After that amount they could be turned over to the County Attorneys. Also, if three or four citations come across on one particular person, she would advise the Board an injunction should also be sought. A \$5,000 fine is levied when a person fails to comply with an injunction. It is a contempt citation before a judge. Normally, they do not do that, however, if there was enough evidence built

up against a person and they violated an injunction she would not hesitate to have that person answering a contempt charge in Court.

CHAIRMAN KEATING asked if the violations are misdemeanors under the law.

Ms. Brown answered 'yes'.

CHAIRMAN KEATING inquired of **Duane Steinmetz** if he would explain the amendments in **EXHIBIT 1** and if they had the State Electrical Board's approval for the amendments.

Mr. Steinmetz referred the question to **Melody Brown** who explained she has not talked to the Board of Electricians, although she feels she could convince them. The purpose of these amendments are because the fiscal notes on the Building Codes concern her and she is also concerned about Cities and Towns Building Code's affecting rural licensure, and also because she has a problem with the bill regarding tracking, she thought this would all be best maintained by the Boards and not to any of the other entities. They don't feel anyone else has the authority to make rules with regard to licensure. This bill might open the door for someone to argue they have authority. She doesn't want 30 cities or towns coming up with their own ordinances regarding how they would enforce this law. She wants to see one process used by the Boards and their inspectors and compliance officers.

CHAIRMAN KEATING asked since the amendments were quite long, if they were germane to the title.

Ms. Brown responded she thinks they are.

CHAIRMAN KEATING inquired why this issue wasn't addressed in the House Committee.

Ms. Brown answered **REP. SIMON** was aware of her concerns at that time.

Closing by Sponsor:

REP. SIMON professed he did resist this kind of an approach in the House. The reason is he thought it would be better to have a multitude of eyes and ears working for the State than having just a limited number of inspectors who are investigators. He also recognizes it creates a lot of unforeseen and unattended problems. He recommends the amendments as they have been presented, however, he does have a concern about the rule-making

authority creating a fine structure. He isn't sure he wants to give them that much authority and asked the Committee to take a serious look at that. This seems to be causing a problem for the Cities. He does not want to cause them those problems. He wants to enforce the plumbing and electrical licensure laws.

He read both the Electrical and Plumbing Code from the statute Building Code section and stated we need to make sure we have qualified people because of public health and safety.

{Tape : 1; Side : A; Approx. Time Counter : 54 - 88}

EXECUTIVE ACTION ON HB 557

Motion: SEN. MCNUTT moved that HB 557 BE CONCURRED IN.

Motion/Vote: SEN. MCNUTT moved that THE AMENDMENT BE ADOPTED EXHIBIT(las55a04). Motion carried unanimously.

Motion: SEN. COCCHIARELLA moved that THE AMENDMENT BE ADOPTED EXHIBIT(las55a05).

Discussion:

SEN. COCCHIARELLA stated REP. EWER probably would not like her amendments and explained them to the Committee.

CHAIRMAN KEATING said it has been reiterated several times this is a compromise and it took time for all the parties to come together. REP. EWER asked specifically not to tamper with this because it would destroy the compromise. He said he does not want to lose the bill for him by doing something on which there has been no public testimony on.

SEN. THOMAS insisted the amendments were good and recommended they be adopted.

SEN. COCCHIARELLA asked if she could have others testify to her amendment.

Darrell Holzer, AFL-CIO, stated he was unaware of these amendments and personally does not see anything wrong with them, but would like to have the opportunity to visit with REP. EWER about them before they are adopted.

Nancy Butler, State Fund, said they supported the bill in the House but she had time to reflect upon some of the language and issues that SEN. COCCHIARELLA brought up. They are concerned about the language which states the physician or health care

provider determines what information is relevant to the claim. They think maybe a judge should make that decision rather than the physician or health care provider.

George Wood, Executive Secretary, Montana Self-Insurer's Association, explained the part of the bill important to them is the definition of 'relevancy'. All that these amendments really do is expedite the manner in which they could find the information necessary to pay the employee. He doesn't believe there is enough change in the amendments to cause anybody any trouble, it should only expedite things.

Vote: Motion that **THE AMENDMENT BE ADOPTED (EXHIBIT 5)** carried 8-1 with **SEN. BARTLETT** voting no.

Motion/Vote: **SEN. THOMAS** moved that **HB 557 BE CONCURRED IN AS AMENDED**. Motion carried unanimously.

EXECUTIVE ACTION ON HB 395

Motion: **SEN. THOMAS** moved that **HB 395 BE CONCURRED IN**.

Discussion:

SEN. MCNUTT said it seems to him in this bill we are not really accomplishing what it is trying to do.

CHAIRMAN KEATING thought from the example that John should be able to receive his full benefit and he should not be penalized for his self-employment income. On the other hand, he doesn't agree Mary should get an increase and she is allowed to get more benefits from the last job. He doesn't know how many of these types of situations there will actually be, but does not think there will be that many. *{Tape : 2; Side : A; Approx. Time Counter : 88 - 94}*

SEN. WILSON stated he thought if John had initiative to make a few extra bucks on the side he should receive a full benefit.

CHAIRMAN KEATING commented this doesn't change Mary's situation.

SEN. COCCHIARELLA mentioned there is one other thing that happens to self-employed people too. If they are on unemployment from the loss of a job and try to become self-employed, the benefits are gone. It is a punishment for self-employed people. She gave an example where the employer might think two different people,

one who is self-employed on the side and one who is not, get the same benefits when actually they do not.

Vote: Motion that **HB 395 BE CONCURRED IN** carried 5-4 **BY ROLL CALL VOTE.**

EXECUTIVE ACTION ON HB 281

Motion/Vote: SEN. KEENAN moved that **HB 281 BE TABLED.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 167

Motion/Vote: SEN. MCNUTT moved that **HB 167 BE CONCURRED IN.** Motion carried unanimously.

ADJOURNMENT

Adjournment: 4:51 P.M.

SEN. TOM KEATING, Chairman

GILDA CLANCY, Secretary

TK/GC

EXHIBIT (las55aad)